

Changes, Mitigation, and Exceptions SWG
Summary of Next Steps from May 24th Meeting
Draft of Working Group Identified Challenges and Actions

When address	Issue	Action Items	Who
June Meeting			
Black Hole & Waiver of Timelines	Non-statutory timelines in the DNRC permitting process do not allow applications to be fully processed in a timely manner.	Black Hole: DNRC will have 90 days from the deadline of the deficiency response (120 days) to determine if the application is correct and complete or terminate. Waiver of the 120-day timeline for a preliminary determination: DNRC will no longer request a waiver of statutory timelines. Applicant may request waiver of statutory timelines (up to X time?)	WG recommendation?
Permits & Changes Process	Provide more clarity in the permitting process, front load information	DNRC work further define, small WG input	Abby and Julie
	Timelines too long	DNRC come back to the WG on changes in timelines, additional FTE required to accomplish	
	Analysis- stakeholders find that there is a battle of the experts, DNRC is not lending credibility to the applicant's assessment, and work is being duplicated. Requirements to meet a preponderance of evidence seems inconsistent.	WG liked the option for DNRC to conduct the analysis. Incorporate into permits and changes	
Objections	Stakeholders identified the challenge of DNRC not supporting their analyses during the objection phase and the process is not understandable to the objectors. Additionally, evaluate the location of the hearing's unit.	DNRC work with small WG on recommendations.	Ryan and Pat
Culture issue	DNRC inconsistency, lack of clarity and documentation	DNRC will be implementing changes based on WG recommendations; culture issues,	

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		consistency between CO and RO, training, and guidance documents will be addresses.	
Mitigation		Inventory of existing tools - framing questions 2A, in addition to mitigation - State water project, need rehabilitation, SUP with the forest service, amend contract with SWP - to only allow for irrigation. Changes in articles and by-laws.	
		Examples of different mitigation plans	
		Work through the Gallatin example to identify the barriers and additional tools for mitigation	Pat and Brian
July Meeting			
Adverse effect	It is unclear how the Department determines adverse effect for permits and changes. Stakeholders want a clear definition, based on case law, applicable to open and closed basins. It appears that DNRC is considering any net depletion to a surface water source as adverse effect. DNRC also needs to review its analyses to determine which ones are actually necessary for evaluating adverse effect (i.e: return flows).	DNRC come back to the WG on how we are distinguishing between net depletion and adverse effect in our analyses, and definition.	Solicit sub-group members
Models and standards	Stakeholders are concerned with the modeling data used by DNRC, their accuracy relative to the modeling and measurement error, and their application to the real-world.	DNRC work with and understanding models used, statistical validity, and their application and draft recommendations. Attila pull together the documentation of the modeling; then lead a small working group discussion (no legislative changes)	Pat, Julie (Bruce), Abby

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Measurement	WG discussed situations where measurement could be required.	Have this be a separate recommendation for the WG to developed. When required to collect, what to do with those data, plays into permitting.	Pat, Krista
Historic Use Analysis	Clarity on what data are needed to meet “preponderance of evidence”, clarity on what information can be provided to meet these criteria, transparency on what information provided by the applicant is or is not used and challenged by pre-1973 information is largely unobtainable.	DNRC develop an alternative & easier to the HUA addendum, get in line with current technology/rule update.	
		Brian, Deb, Julie to develop rule recommendations (1902) on HUA and specifically the county mgt factors for irrigation	Brian, Julie, Deb
Statements of claim, changes	Changes on water rights were accepted before statement of claims were filed on the water right. Information on the change is different than what is on the claim.	Julie/Deb to propose a solution.	Julie & Deb
Verification	New appropriations are rarely, if ever, verified to determine if the best estimates submitted with applications are what is actually used on the ground. We are starting to see the consequences of this with change applications coming in to increase flow rate from a new well to “get to our permitted volume”.	Another stakeholder group to address this broader issue (KC #1)	No action
Rules	Clarity is needed for why rules are in existence, if they need to be updated, and how they are applied. Need to focus on streamlining and flexibility.	This will be addressed in Key Challenge #2, feedback from this working group will define what rules need to be simplified and updated.	No action